

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DONALD HEIMSTAEDT and TODD KORTE,

Civil Action No.: 07CIV9389 (JSR)

Plaintiffs,

-against-

**AFFIDAVIT OF
GEORGE KOUTSOS
IN SUPPORT OF
MOTION TO DISMISS**

PREM.AIR NEW YORK, LLC, PREM.AIR GROUP
OF NEW YORK, LLC, PREM.AIR GROUP, LLC,
MCQUAY NEW YORK, LLC, GEORGE KOUTSSOS,
ERIC BERKOWITZ, MCQUAY NEW YORK PROFIT
SHARING PLAN, and XYZ TRUSTEES OF THE
MCQUAY NEW YORK, LLC 401(k) PROFIT
SHARING PLAN,

Defendants.

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STATE OF NEW YORK)
)ss.:
COUNTY OF QUEENS)

GEORGE KOUTSOS, being duly sworn, deposes and says that:

1. I am the sole member of defendants Prem.Air Group of New York LLC and Prem.Air Group LLC, and am named as a defendant in my individual capacity in this action.

2. I submit this affidavit in support of the motion to dismiss the following counts in the First Amended Complaint:

(i) the Fourth Count for Breach of Contract against defendant Prem.Air Group LLC;

(ii) the Fifth Count for Fraud and Misrepresentation against all of the defendants;

(iii) the Sixth Count for Quantum Meruit against all of the defendants;

(iv) the Seventh Count for Unjust Enrichment against all of the defendants;
and

(v) the Eighth Count for Piercing the Corporate Veil against defendants George Koutsos and Eric Berkowitz.

3. As alleged in the First Amended Complaint, plaintiffs Donald Heimstaedt and Todd Korte were, at all relevant times, at-will employees of defendant Prem.Air Group of New York LLC (f/k/a McQuay New York LLC).

4. Neither Donald Heimstaedt nor Todd Korte were ever employees of any other defendants, at any time. Indeed, Prem.Air Group LLC was not organized until May 31, 2006, years after the plaintiffs entered into their oral employment agreements with defendant Prem.Air Group of New York LLC (f/k/a McQuay New York LLC). Attached hereto as Exhibit 1 is a copy of the filing receipt of Prem.Air Group LLC.

5. Attached hereto as Exhibit 2 are copies of the IRS W-2 tax statements issued to plaintiffs Donald Heimstaedt and Todd Korte by defendant Prem.Air Group of New York LLC (f/k/a McQuay New York LLC) for the years 2004 through 2006.

6. Prem.Air Group of New York LLC was formally known as McQuay New York, LLC. McQuay New York LLC was organized on April 8, 1999 and on July 18, 2006, it amended its Certificate of Organization to change its name to Prem.Air Group of New York LLC (See Exhibit 3 hereto). They are one and the same entity with the same federal tax identification number.

WHEREFORE, for the reasons set forth in the annexed Notice of Motion, Affirmation of Arthur J. Semetis and Memorandum of Law, the counts complained of in the plaintiffs' First

Amended Verified Complaint, as set forth more fully in paragraph 2 of this affidavit, should be summarily dismissed.

Sworn to before me this
20th day of February, 2008

/s/

George Koustos

/s/

Notary Public
Darla S. Babcock
Notary Public of New York
No. 01BA5072077
Qualified in Queens County
Commission Expires January 21, 2011

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